

## REMARKS

By the above amendment, independent claims 21 and 37 have been amended to further define the feature of an image compensation unit, with claims 21 and 37 being amended to now recite an image compensation unit for generating at least a translucent image of the color elasticity image or the outline image and for generating a translucent composite image by superposing the translucent image of the color elasticity image on the gray scale tomographic image including a predetermined area, and further reciting a display unit for displaying the superposed translucent composite image of the translucent image of the color elasticity image or the outline image on the gray scale tomographic image so as to enable comparison of a spread condition of a stiff area of the tissue of the object in the translucent image of the color elasticity image or the outline image with respect to the predetermined area of the tissue of the object in the gray scale tomographic image whereby diagnosis of a condition of the tissue of the object is enabled. Such features are illustrated in Figs. 3 and 6 of the drawings of this application, for example, wherein by making a translucent image of the elasticity image as shown in Fig. 3B, a translucent composite image in which the translucent elasticity image is superposed on the tomographic image of Fig. 3A is formed as illustrated in Fig. 3C, and is displayed so as to enable comparison and a diagnosis by scoring, as described in the brochure submitted with the Amendment filed December 18, 2007 in this application. Applicants note that this description is found at pages 12 and 13 of the specification of this application. Fig. 6 shows a similar arrangement for a translucent image of an outline image to form a translucent composite image. In this manner, a proper comparison can be obtained so as to enable diagnosis with proper

scoring. Additionally, the dependent claims have been amended in accordance with the language of the independent claims, and applicants submit that the recited features of the independent and dependent claims are not disclosed or taught in the cited art, as will become clear from the following discussion.

As to the rejection of claims 21 - 41 under 35 USC 103(a) as being unpatentable over Von Behren et al (USPN 6,558,324) in view of Sarvazyan (USPN 5,678,565); this rejection is traversed insofar as it is applicable to the present claims, as amended, and reconsideration and withdrawal of the rejection are respectfully requested.

In applying Von Behren et al and Sarvazyan to the claims, the Examiner under the heading "Response to Arguments" at pages 4 and 5 of the Office Action, contends that the features of the image composition unit and the display unit merely recite intended use and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Contrary to the position set forth by the Examiner, applicants submit that the claims recite the characteristics of the image composition unit and the display unit in functional terms, and the Examiner is referred to MPEP §2173.05(g), which provides that a functional limitation must be evaluated and considered, just like any other limitation of the claims, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. Further, irrespective of the Examiner's contentions that the prior art structure is capable of performing the intended use, applicants submit that neither Von Behren et al nor Sarvazyan, taken alone, or in any combination thereof, disclose or teach the features, as now recited in claims 21 and 37, of an image composition unit for

generating at least a translucent image of the color elasticity image or the outline image and for generating a translucent composite image by superposing the translucent image of the color elasticity image or the outline image on the gray scale tomographic image. Thus, applicants submit that the independent claims and the dependent claims, patentably distinguish over this proposed combination of references and should be considered allowable thereover with respect to this feature alone.

Additionally, applicants submit that neither Von Behren et al nor Sarvazyan, taken alone or in combination, provide a disclosure or teaching of a displaying unit for displaying the superposed translucent composite image of the translucent image of the color elasticity image or the outline image on the gray scale tomographic image so as to enable comparison of a spread condition of a stiff area of the tissue of the object in the translucent image of the color elasticity image or the outline image with respect to the predetermined area of the tissue of the object in the gray scale tomographic image, wherein diagnosis of a condition of the tissue of the object is enabled, as obtained by the scoring process, for example, as described in the brochure referred to above. Thus, applicants submit that independent claims 21 and 37 and the dependent claims further patentably distinguish over Von Behren et al and Sarvazyan, taken alone or in combination, and all claims should be considered allowable thereover.

With respect to the dependent claims, applicants submit that irrespective of the contentions by the Examiner, the dependent claims recite further features of the present invention when considered in conjunction with the independent claims,


further patentably distinguish over the cited art, such that the dependent claims should also be considered allowable at this time.

In view of the above amendments and remarks, applicants submit that all claims present in this application should now be in condition for allowance, and issuance of an action of favorable nature is courteously solicited.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 529.44847X00), and please credit any excess fees to such deposit account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

/Melvin Kraus/   
Melvin Kraus  
Registration No. 22,466

MK/jla  
(703) 312-6600